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# State v. Hiatt Respondent's Brief Dckt. 44059

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	No. 44059
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-FE-2009-19639
	)	
MICHAEL ANTHONY HIATT,	)	
	)	
Defendant-Appellant.	)	
	)	
	)	

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**BRIEF OF RESPONDENT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE JASON D. SCOTT**  
District Judge

---

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## STATEMENT OF THE CASE

### Nature Of The Case

Michael Anthony Hiatt appeals the denial of his Rule 35 motion, claiming that his proposed application of 2015 statutory amendments to a 2013 order revoking probation is not retroactive.

### Statement Of The Facts And Course Of The Proceedings

The district court entered a judgment of conviction on the jury's guilty verdict of felony domestic violence, sentencing Hiatt to five years with two years determinate and retaining jurisdiction on May 19, 2010. (#40990 R., pp. 113-15.) The court later suspended execution of the sentence and placed Hiatt on probation for five years. (#40990 R., pp. 121-23.) Hiatt violated his probation three times, was reinstated on probation the first two times, but was ordered to serve his sentence on May 1, 2013. (#40990 R., pp. 160-63, 231-33, 267-68.) The district court ordered Hiatt be given credit for 69 days served. (#40990 R., p. 268.) The Idaho Court of Appeals affirmed the revocation of probation and sentence. State v. Hiatt, Docket No. 40990, 2014 Unpublished Opinion No. 393 (Idaho App., March 25, 2014).

On August 8, 2013, while the case was on appeal, Hiatt moved for credit for time served. (R., pp. 13-16.) The district court granted the motion on August 9, 2013, awarding credit for 548 days served. (R., pp. 26-28.) The district court specifically declined to grant credit for eight days served as a condition of probation. (R., p. 27.) This order was neither appealed from nor, apparently, challenged in the previously filed appeal. See, generally, Hiatt, Slip Op. at p. 1.

On January 27, 2016, Hiatt moved for credit for time served as a condition of probation, citing a 2015 amendment to I.C. § 18-309 providing that credit for time served as a condition of probation should be awarded. (R., pp. 30-31, 33.) The district court denied the motion, holding that the 2015 statutory amendment to provide for credit to time served as a condition of probation did not apply retroactively to the 2013 order. (R., pp. 41-43.) Hiatt filed a timely notice of appeal. (R., pp. 45-46.)

## ISSUE

Hiatt states the issue on appeal as:

Did the district court err when it denied Mr. Hiatt credit for time served as a condition of probation?

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Hiatt failed to demonstrate that the 2015 amendments to I.C. §§ 18-309 and 19-2603 applied to the revocation of his probation in 2013?



## ARGUMENT

### The Amendments To I.C. §§ 18-309 And 19-2603 Do Not Apply Retroactively

#### A. Introduction

The district court held that the 2015 amendment to I.C. § 18-309, which requires the award of credit for time served as a condition of probation, did not render illegal its 2013 award of credit for time served, which did not grant credit for discretionary time served as a condition of probation. (R., pp. 41-43.) On appeal Hiatt contends the district court erred because the sentence was illegal in 2016, the time his motion for reconsideration was filed. (Appellant's brief, pp. 6-15.) Hiatt's argument is without merit because he is requesting an improper retroactive application of the statutory amendments.

#### B. Standard Of Review

"The question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts." State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005) (citing State v. Hale, 116 Idaho 763, 779 P.2d 438 (Ct. App. 1989)). The appellate courts "defer to the trial court's findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous." State v. Covert, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006) (citing State v. Davis, 139 Idaho 731, 734, 85 P.3d 1130, 1133 (Ct. App. 2003)).

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson,

140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

C. The Legislature Did Not Make The Amendments To I.C. §§ 18-309 And 19-2603 Retroactive

At the time the district court entered its order revoking probation and its order denying credit for time served as a condition of probation it was clearly established that a probationer was “not entitled to credit for the time he voluntarily surrendered to gain probation.” State v. Banks, 121 Idaho 608, 610, 826 P.2d 1320, 1322 (1992); see also State v. Jakoski, 132 Idaho 67, 68, 96 P.2d 663, 664 (Ct. App. 1998) (citations omitted) (“The law in this area is well settled. A period of incarceration that is a term and condition of probation will not be credited to a defendant whose probation is subsequently revoked.”). Thus, the district court’s orders denying credit for time served as a condition of probation were entirely consistent with existing law when they were entered in 2013.

Hiatt argues that the 2015 amendments<sup>1</sup> to I.C. §§ 18-309 and 19-2603 regarding credit for time served as a condition of probation should have been applied to his Rule 35 motion. (Appellant’s brief, pp. 5-14.) This argument does not withstand analysis because such would require improper retroactive application of the statutory amendments.

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<sup>1</sup> Three statutes, I.C. §§ 18-309, 19-2603, and 20-209A, were all amended in 2015 H.B. 64 (2015 Idaho Sess. Laws, Chapter 99, pp. 240-41) to provide that credit for all pre- and post-judgment incarceration associated with a conviction would be awarded as time served in criminal cases. I.C. § 19-2603 is specifically applicable to the award of credit for time served upon revocation of probation.

Idaho statutes are not to be applied retroactively “unless expressly so declared.” I.C. § 73-101. See also Guzman v. Piercy, 155 Idaho 928, 937-38, 318 P.3d 918, 927-28 (2014) (Idaho statutes are “not applied retroactively unless there is clear legislative intent to that effect.” (internal quotes omitted)). Because there is no express legislative declaration of retroactivity in the credit for time served statutes, I.C. §§ 18-309 and 19-2603, as amended in 2015, “they do not have retroactive effect.” State v. Leary, 160 Idaho 349, 352, 372 P.3d 404, 407 (2016).

The relevant amendments became effective on July 1, 2015. I.C. § 67-510. The district court entered its order denying credit for time served as a condition of probation on August 9, 2013. (R., pp. 26-27.) Because the amendments are not retroactive, they did not apply to the district court’s calculation of credit for time served. Leary, 160 Idaho at 352-53, 372 P.3d at 407-08.

Hiatt argues that because he asked for application of the statutory amendments at the time of his Rule 35 motion, he is not asking for retroactive application. (Appellant’s brief, pp. 6-15.) However, by definition his motion was one to “correct a court’s computation of credit for time served, granted pursuant to Idaho Code Sections 18-309 or 19-2603.” I.C.R. 35(c). Despite his protestations to the contrary, the order Hiatt wished to “correct” through his Rule 35 motion was entered in 2013, and he therefore was, and is, seeking a retroactive application of the amendments.

Hiatt is requesting retroactive application of a statute despite the lack of any indication the legislature intended such retroactive application. He has therefore failed to show error in the district court's denial of his motion.

#### CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying the Rule 35 motion.

DATED this 14th day of March, 2017.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of March, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd